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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 09/459,979 | 12/14/1999 | MARK WILLIAM JAMES FERGUSON | 39-196 | 1874 |

7590 10/08/2002

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| EXAMINER |
|---|
| JIANG, DONG |

| ART UNIT | PAPER NUMBER |
|---|---|
| 1646 | 15 |

DATE MAILED: 10/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

| Advisory Action | Application No. | Applicant(s) | |
|---|---|---|---|
| | 09/459,979 | FERGUSON, MARK WILLIAM JAMES | |
| | Examiner | Art Unit | |
| | Dong Jiang | 1646 | |

*--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

THE REPLY FILED 10 September 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☐ The proposed amendment(s) will not be entered because:

   (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ they raise the issue of new matter (see Note below);

   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See Continuation Sheet*.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: *39-43*.

   Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)( PTO-1449) Paper No(s). _____.

10. ☐ Other: _____

Lorraine Spector

LORRAINE SPECTOR
PRIMARY EXAMINER

Continuation of 5. does NOT place the application in condition for allowance because: rejection of claims 39-43 under 35 U.S.C. 103(a) as being unpatentable over Mustoe et al. (J. Clin. Invest., 1991, 87(2):694-703), and Badgett et al. (J. Lipid mediators Cell signaling, Jan. 1996, 13(1): 89-97), is maintained. The Examiner would like to clarify that the author's name from one of the references, Pierce, appeared at pages 3 and 4 of the last Office Action, paper No. 12, was mis-cited, and it should be "Mustoe" as the cited content of the art is from the reference by Mustoe. The Examiner would like to thank the applicants for pointing out this issue.

Applicants arguments have been fully considered, but is not deemed persuasive for the following reasons: with respect to the first point that Badgett provides that IFN-g inhibits fibroblast proliferation even in the presence of PDGF, Badgett's experiment was carried out in vitro, where a fixed concentration of PDGF was present. Whereas when IFN-g is used in vivo, it would prime macrophages and cells required for normal wound repair for increased PDGF production, which is different from the in vitro situation. Additionally, iron is present in vivo. Thus, in the presence of iron, more PDGF would be produced based on Badgett's teaching that there is a clear concentration-dependent priming effect of IFN-g on the secretion of macrophage-derived PDGF. As such, the PDGF-stimulated fibroblast proliferation would be dominating effect in vivo.

With respect to the second point that Badgett's teachings regarding the ability of IFN-g to prime increased PDGF release in the presence of iron are not applicable, as the present invention is directed to a method of treatment in vivo, and iron is present in vivo, Badgett's teachings are applicable.

With respect to the third point that Badgett shows that in the absence of iron priming, IFN-g does not cause a dose-dependent increase in PDGF production, again, as iron is present in vivo, therefore, a dose-dependent increase in PDGF production by IFN-gamma would be expected when IFN-gamma is applied in vivo.